

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

FEDERAL AVIATION ADMINISTRATION FORT WORTH, TEXAS Respondent	
and NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION Charging Party	Case Nos. DA-CA-90666 DA-CA-90707

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **JANUARY 22, 2001**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, Suite 415
Washington, DC 20424-0001

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: December 22, 2000
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

MEMORANDUM

DATE: December 22, 2000

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: FEDERAL AVIATION ADMINISTRATION
FORT WORTH, TEXAS

Respondent

CA-90666 and Case Nos. DA-
CA-90707 DA-

NATIONAL AIR TRAFFIC CONTROLLERS
ASSOCIATION

Charging Party

Pursuant to section 2423.34(b) of the Rules and Regulations, 5 C.F.R. § 2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the transcript, exhibits and any briefs filed by the parties.

Enclosures

FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges

WASHINGTON, D.C.

OALJ 01-10

FEDERAL AVIATION ADMINISTRATION FORT WORTH, TEXAS Respondent	
and NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION Charging Party	Case Nos. DA-CA-90666 DA-CA-90707

Mr. Daniel G. Murphy
Ms. Rachel W. Nolen
For the Respondent

John Bates, Esquire
Bobby R. Devadoss, Esquire
For the General Counsel

Before: WILLIAM B. DEVANEY
Administrative Law Judge

DECISION

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, et. seq. 1, and the Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1 et seq., concerns whether Respondent violated §§ 16(a)(1), (2) and (4) when it gave the Union President, Mr. Darrell Meachum, an oral admonishment on February 10, 1999, and whether, as alleged in the Complaint, Respondent violated §§ 16(a)(1), (2) and(4) when Mr. Meachum, who was in the control room seeking an on duty controller's choice of size and color of Union shirt he wanted, was told by an Operational Supervisor not to discuss anything in the

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For convenience of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial, "71", of the statutory reference, i.e., Section 7116(a)(2) will be referred to, simply, as, "\$ 16(a)(2)".

control room unless it related to Air Traffic Control; and whether, as alleged in the complaint, Respondent violated § 16(a)(1) when an Operational Supervisor accused Mr. Meachum of causing a disturbance in the control room.

This case was initiated by a charge in Case No. DA-CA-90666, filed on July 19, 1999, in two parts, #1 alleged violations of §§ 16(a)(1) and (2) and #2 alleged violations of §§ 16(a)(1), (2) and (4) (G.C. Exh. 1(a)) and by a charge in Case No. DA-CA-90707, filed on August 6, 1999, also in two parts, #1 alleged violations of §§ 16(a)(1), (2) and (4) and #2 alleged violations of §§ 16(a)(1), (2), (4) and (5) (G.C. Exh. 1(c)). The Consolidated Complaint (G.C. Exh. 1(e)), issued March 31, 2000; alleged violations only of §§ 16(a)(1), (2) and (4) of the Statute; and set the hearing for July 13, 2000, in Dallas, Texas, at a location to be determined. On June 28, 2000, General Counsel filed a Motion To Amend Complaint (G.C. Exh. 1(h)), to which the other parties had no objection; and on July 6, 2000, Notice was issued setting the location of the hearing (G.C. Exh. 1(i)), pursuant to which a hearing was duly held in Dallas, Texas, on July 13, 2000, before the undersigned. All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues involved, and were afforded the opportunity to present oral argument, which each party waived. At the conclusion of the hearing, August 14, 2000 was fixed as the date for mailing post-hearing briefs, which time subsequently was extended, on timely motion of General Counsel, to which the other parties did not object, for good cause shown, to September 14, 2000. Respondent and General Counsel each timely submitted a helpful brief, received on, or before, September 19, 2000, which have been carefully considered. Upon the basis of the entire record, including my observation of the witnesses and their demeanor, I make the following findings and conclusions:

FINDINGS

1. The National Air Traffic Controllers Association (NATCA) is the exclusive representative of a nationwide bargaining unit of air traffic controllers of the Federal Aviation Administration (FAA) and the Fort Worth Center Local (hereinafter, "Union") is the agent of NATCA for the representation of unit employees at FAA's Fort Worth, Texas, Air Traffic Control Center (hereinafter, "Respondent").

2. Mr. Darrell Meachum is an Air Traffic Control Specialist; has worked for FAA for eighteen years; is the facility representative and has been President of the union since July 1, 1999 (Tr. 16).

3. Mr. Meachum was assigned to FAA Headquarters in Washington, D.C. for an unspecified time (Tr. 16). He said when he came back from Washington, D.C., ". . . I was being treated differently." (Tr. 16).

4. After he had returned from Washington, D.C., Mr. Meachum filed charges in Case Nos. DA-CA-80155 and DA-CA-80322; a Complaint issued; and the parties reached a bilateral settlement (Tr. 17). As part of the settlement, a Notice was to be posted, and when the Notice was posted on December 9, 1998, it was supposed to have been signed by the Acting Air Traffic Manager but was signed by someone else (Tr. 17). Mr. Meachum noted that the Notice had not been signed by the Acting Air Traffic Manager and notified the Authority's Regional Office that Respondent was not complying with the settlement agreement. The Regional Office told Mr. Meachum it would enforce compliance and on December 19, 1998, a Notice, properly signed by the Acting Air Traffic Manager, was posted (Tr. 18). This Notice was taken down by Respondent on February 9, 1999, 60 days from the date of posting of the non-complying Notice, but only 50 days from the posting of the properly signed Notice, on December 19, 1998. Mr. Meachum complained to the Authority's Regional Office that Respondent had not maintained the posting of the properly signed Notice for 60 consecutive days; the Regional Office agreed and required Respondent to re-post the Notice, which it did on May 17, 1999, and to maintain the posting for 60 consecutive days from May 17 (Tr. 19-20).

5. On February 3, 1999, Mr. Meachum, who was not on duty, entered the control room and began telling controllers, who were on duty, about ongoing negotiations over the schedule for controllers. Mr. Meachum said that his negotiation with Mr. McCorey had been pretty contentious; that controllers could not bid their leave, or their crews, until the negotiations were complete so they were very interested in what was happening (Tr. 53-54). Mr. Meachum said that controllers asked him questions and he had responded, repeating, he asserted, what Mr. McCorey had said (Tr. 54). One of the controllers who asked him a question was Mr. Ron Myers, who was working the McAllister Low R side, and Controller Les Staffsling, who was working the Blue Ridge/Seever position, was just behind Mr. Meachum (Tr. 54).

Mr. Ron Vick, Operational Supervisor, said Mr. Meachum was very loud, very disruptive and he told him to, ". . . take it back out -- you know, tone it down or take it back out of the control room floor" (Tr. 116; 117). Mr. Vick

said that Mr. Meachum left the control area (Tr. 117). Mr. Vick informed no one and there was no disciplinary action taken against Mr. Meachum.

Mr. Meachum asserted that he was not loud (Tr. 55-56); that his conversation took, ". . . all of 15 to 20 -- maybe ten to 20 seconds, tops." (Tr. 55); that he asked Mr. Myers, after Mr. Vick had told him to tone it down or take it out of the control room, if he were disturbing him and Mr. Myers had said, ". . . No, of course not" (Tr. 55) and that Mr. Staffsling had made the smart aleck response, ". . . You were talking?" (Tr. 55).

I do not credit Mr. Meachum's characterization of his actions on this occasion. Mr. Meachum is a very loquacious person and his own description of his conversation belies any contention that he spoke only ". . . ten to 20 seconds, tops" (Tr. 55); nor does his description support his later assertion that Mr. Myers asked, ". . . Hey, what's the status. . . ." (Tr. 54) and before he could answer, Mr. Vick said he was creating a disturbance, inasmuch as Mr. Meachum said he was having discussions on the floor; that controllers asked him questions; that he answered; and that he purported to repeat Mr. McCCorey's statements of position (Tr. 53-54). Rather, I credit Mr. Vick's testimony that Mr. Meachum was loud and was addressing the entire controller speciality (Tr. 116, 117, 120, 122-123); that he did cause a disturbance in the control room; that the working controllers were distracted and turned to hear Mr. Meachum. Mr. Vick's testimony is corroborated, notwithstanding Mr. Meachum's denial, by Mr. Meachum's testimony that he was talking to the controllers; that they asked questions and that he purported to repeat Mr. McCCorey's statements. Plainly, the record shows that Mr. Meachum was not talking in a low tone to a single controller. Despite Mr. Meachum's and General Counsel's contention that Mr. Meachum was talking in the manner that controllers normally talk to each other and that Mr. Vick said Mr. Meachum was creating a disturbance only because he was discussing schedule negotiating, the record is to the contrary. Mr. Meachum was loud and was distracting working controllers and Mr. Vick merely told Mr. Meachum to tone it down or take the discussion outside the control room.

6. Sometime in February, 1999, the parties not fixing the date with any more certainty, Mr. Meachum, who was not on duty, entered the control room armed with, as he said, ". . . this big grid of things, and I had everyone's name on there that wanted a shirt, and I had their size and color." (Tr. 48). Mr. Meachum went to Mr. Tom Hanes, who was working the McAllister High D Side, because, ". . . he

was one of the last ones I had to get." (Tr. 48). Mr. Hanes had come from Dallas' Love Field, where he had been a FPL Controller, but was new to the Fort Worth Air Traffic Control Center where he was in training (Tr. 48-49). Mr. Meachum had put his "big grid" down and was asking Mr. Hanes what size and color shirt he wanted when Ms. Julie Williams, Operations Supervisor and Mr. Hanes' immediate supervisor, came over. Mr. Meachum said Ms. Williams said, "Don't talk about anything in the control room unless it's ATC related." (Tr. 49); and Mr. Hanes said Ms. Williams told Mr. Meachum, ". . . he needed to only be talking ATC related items." (Tr. 106). Mr. Meachum, to test Ms. Williams, ". . . put my hand on his [Hanes'] shoulder, and I leaned into the position . . . So I just basically started asking him questions of an ATC nature . . . I asked three questions. The one I remember was, what is the arrival altitude for Tulsa approach? . . . I asked him three ATC questions and she listened to every word that I said. . . . he got them all right. And when I walked away, she walked away. I left the control room. . . ." (Tr. 51-52). Mr. Hanes did not make any mention whatever of Mr. Meachum asking him questions.

Ms. Williams testified that Mr. Hanes was very busy, ". . . he had all of his strips right in front of him, and then, the radar scope was to the left with the R side controller . . . and his head was just going back and forth trying to keep up with everything." (Tr. 130). Ms. Williams said she, ". . . just asked Darrell [Meachum] to wait until the employee was on break to speak to him"; that Mr. Meachum, ". . . ignored me and continued on . . . I again asked him to wait because the sector was busy and Mr. Hanes needed to do his job." (Tr. 130); and that Mr. Meachum, after some loud comments, left (Tr. 131). Ms. Williams said she "forwarded it"² to Mr. Meachum's first line supervisor, she was uncertain whether it was Mr. Vick or Ms. Martin, and there was no disciplinary action (Tr. 131).

Ms. Williams emphatically denied that she told Mr. Meachum he could only discuss air traffic control business in the control room (Tr. 131). She said, "I just asked Darrell to wait until the employee was on break to 2 speak to him" (Tr. 130); that Mr. Meachum, ". . . ignored me

Ms. Williams later further explained,

"A I wrote a little buck slip up of the event and sent it on, and that was it. As far as I know, nothing ever came of it. It was just an incident." (Tr. 140).

and continued on . . . I again asked him to wait because the sector was busy and Mr. Hanes needed to do his job" (Tr. 130). On cross-examination, when General Counsel suggested that she had said, ". . . don't talk about anything that's not work related?" (Tr. 137), Ms. Williams answered,

"A I did not say that, I just asked him to wait till he was on break.

"Q Did you ask him what they were talking about?

"A No. It didn't matter to me. The only thing that bothered me was that he was distracting him." (Tr. 137).

Ms. Williams very credibly testified that it is a common occurrence, when a section is busy, that she stops conversations (Tr. 141, 143) and when a person not on duty comes into the control room to talk to an on-duty controller it is a greater distraction than when one on-duty controller talks to another on-duty controller, e.g. Mrs. Lisa Wooten, who works in the control room in another area, coming to the control room to talk to her husband, Mr. Steve Wooten, a controller, and Ms. Williams asked her to wait until he wasn't busy (Tr. 144). I find wholly persuasive Ms. Williams testimony that a sector supervisor is a better judge than a controller as to when a controller is being distracted because the supervisor sees the entire work flow of the sector. (Tr. 145).

I do not credit Mr. Meachum's testimony that Ms. Williams said, "Don't talk about anything in the control room unless it's ATC related". I do so for a number of reasons. First, Mr. Meachum ignores his conduct and blames any comment by management to him as motivated by some ulterior motive, e.g. when he came back from Washington, D.C., ". . . I was being treated differently" (Tr. 16); here, he asserted it was because he was taking orders for union "T" shirts and/or because he had aggressively sought compliance with an Authority Notice, whereas, the record shows, without contradiction, that Mr. Meachum came into the control room with his "big grid" for "T" shirt orders and went to a busy on-duty controller and interrupted him to obtain information for a "T" shirt order. Mr. Meachum's assertion that Ms. Williams told him not to talk about anything unless it is ATC related appears wholly contrived. Second, Mr. Meachum's assertion that, after Ms. Williams' statement, he proceeded to quiz Mr. Hanes, was not supported by the testimony of Mr. Hanes and, had Mr. Meachum conducted such an examination of Mr. Hanes, it is the sort of thing Mr. Hanes most certainly would have remembered; and

Ms. Williams, contrary to Mr. Meachum's testimony that she "listened to every word that I said . . . he [Hanes] got them all [three questions] right." (Tr. 52), said that, while Mr. Meachum ignored her and "continued on" and she again asked him to wait because the sector was busy (Tr. 130), she did not know what they were talking about, ". . . It didn't matter to me. The only thing that bothered me was that he [Meachum] was distracting him [Hanes]." (Tr. 137). Moreover, Ms. Williams' testimony does not support Mr. Meachum's testimony that he, Meachum, asked Mr. Hanes three questions. Third, Mr. Meachum's testimony is implausible, namely, that it is alright to interrupt a controller if you talk about ATC matters, including, according to Mr. Meachum, his conducting a questioning of a controller in training, which would necessitate the controller giving close attention to the "test" rather than to his, or her, duties. Fourth, I found the testimony of Ms. Williams credible, convincing and consistent. As noted above, I found entirely persuasive her testimony that a sector supervisor is a better judge than a controller as to when a controller is being distracted; and I also found entirely credible and persuasive Ms. Williams' testimony that it is a common occurrence, when a sector is busy, for her to stop conversations and she specifically gave as an example telling a controller who was not on duty, Mrs. Wooten, to wait until her husband, an on duty controller, wasn't busy. She denied emphatically that she ever told Mr. Meachum he could only discuss air traffic control business in the control room and, when General Counsel, on cross-examination, suggested that she might have told Mr. Meachum not to talk, ". . . about anything that's not work related", she responded, ". . . I did not say that. I just asked him to wait till he was on break." (Tr. 137). Because I found Ms. Williams a wholly credible witness, I credit her denial and find that she did not tell Mr. Meachum he could only discuss air traffic control business in the control room and further find that, because the sector was busy, she simply told Mr. Meachum to wait until Mr. Hanes was on break.

I have carefully considered Mr. Hanes' testimony, namely his assertion that Ms. Williams told Mr. Meachum, ". . . he needed to only be talking ATC related items" (Tr. 106), but do not find it convincing and, therefore, I do not credit this statement.

7. On February 10, 1999, Ms. DeAnn Martin, Mr. Meachum's immediate supervisor, gave Mr. Meachum an oral admonishment for three incidents; however, she reduced to writing the basis for the admonishment and her expectations for Mr. Meachum's future conduct (Res. Exh. 3; Tr. 174,

175). The three incidents made the subject of the oral admonishment, in order of occurrence, were as follows:

(a) Traffic Manager Coordinator incident. On January 20, 1999, Mr. Kenneth Woodham, a Traffic Manager Coordinator, a non-supervisory, bargaining unit position, who is required to work eight hours per month as a controller, came to the control room and plugged into the D side at the Blue Ridge/Seever sector and put his initials on the break list (Tr. 164). Other controllers protested Mr. Woodham's plugging into the D side, rather than the A side, where the controller takes strips of paper from the printer, places them in strip holders, and passes them to the D side controller (Tr. 100). Mr. Woodham said, ". . . I don't get credit for getting time on the A side. And as a staff member getting eight-hour currency, we don't have to do that. We go straight to our position. . . ." (Tr. 165).

There is no dispute that Mr. Meachum, who was on duty, entered the conversation as a Union representative. I do not credit the inference Mr. Meachum sought to impart, namely that he was Mr. Woodham's, "White Knight" in that he told Mr. Woodham he was correct and, as a staff specialist getting his eight hours currency, he did not have to work the A side. Rather, I find that Mr. Meachum told Mr. Woodham he had to work the A side because, as Mr. Meachum said, ". . . the rules say . . . that, . . . before you work your position, you're required to work the A side." (Tr. 26). Further, Mr. Meachum said the controllers were, ". . . correct in what it [rules] says." (Tr. 26). I further find, as Mr. Woodham credibly testified, that Mr. Meachum told him he would be skipped on the break list because he had not complied with the rules (Tr. 164), which was confirmed by the notes Mr. Woodham made of the incident on the day of its occurrence (Res. Exh. 2). I have no doubt that Mr. Meachum, in his loquacious manner, as he said to carry favor with Traffic Management specialists whom he was trying to organize nationally (Tr. 131), said that he personally did not agree with the break list rules which, ". . . say he [Woodham] was supposed to follow the break list procedures by working the A side first" (Tr. 27) and that the Union was in negotiations at that time seeking to change the break list rules to reflect Mr. Meachum's view that a Traffic Management specialist coming in to get the required eight hours would not be required to work the A side (Tr. 27, 28, 29).³ Nevertheless, as Mr. Meachum said,

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Indeed, Mr. Meachum said that within a week after January 20, 1999, ". . . management and the union came to an agreement, and that exact policy that I described to him is what we agreed to." (Tr. 37-38)

this, ". . . was just an explanation" (Tr. 29) and I conclude that Mr. Meachum did, in effect, tell Mr. Woodham that until the rule was changed he would have to work the A side.

(b) The Guard Shack Incident. On January 31, 1999, Mr. Meachum drove his Alpha Romeo to work and, because the car had no sticker on it, the guard stopped him and told him he would have to get a pass for the car. Mr. Meachum said that he went to the guard shack and told the guard, "Don't you think it's stupid that my car has to have a pass when I've got a picture ID?" (Tr. 102). Mr. Meachum said that the guard, a female, told him that there was nothing she could do about that and, ". . . she attached the word, sir, at the end of it. She said something along the lines of, Nothing I can do about that, sir." (Tr. 102-103). Mr. Meachum said that he responded, ". . . My name's not Sir, it's Darrell. And I had my badge up because she had to see who I was. And I said, It's not Sir, it's Darrell." (Tr. 103). Mr. Meachum said the guard gave him a badge and he said, ". . . My car is safer -- will feel safer now." (Tr. 103). Mr. Meachum said the guard, ". . . appeared to me to feel a little intimidated because I was looking at the little girl [in the guard shack]" (Tr. 103). Mr. Meachum insisted he didn't raise his voice, did not raise his hand, ". . . So to be accused of being intimidating and threatening really surprised me. What I found to be intimidating was that she was concerned that I was looking at the girl. . . ." (Tr. 103)⁴

Ms. Martin stated that the guard keeps a log and recorded the incident as Mr. Meachum having given her a hard time (Tr. 177) which was sent to her as Mr. Meachum's first line supervisor; that when she read the report she asked security to get more details on what had happened; and that security had reported that the guard, who is not an employee of FAA, had stated that, ". . . she was just trying to do her job. She's required to let people have a pass when they come in, had stopped Darrell, and he gave her a hard time . . . used the word stupid. And she felt intimidated and said he was kind of rude and cocky." (Tr. 177-178)

Mr. Meachum, in an affidavit, had written, "The second situation that I was admonished for [the guard shack incident] was stupid on my part." (Tr. 80). Although Mr. Meachum insisted his actions with respect to the security guard were stupid only because he, ". . . didn't

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After the guard reported the incident and Mr. Meachum received the oral admonishment, he reported the guard for having a child with her in the guard shack.

have a witness, not because of what I did." (Tr. 80; also, Tr. 95), the record plainly shows that his actions with respect to the guard were stupid. Mr. Meachum said he knew he had to stop at the guard shack to get a pass, or sticker, for his car (Tr. 102); his comments to the guard were wholly unprovoked, were rude and, I believe, would have seemed intimidating to the guard. Obviously, Mr. Meachum was overbearing and demonstrated exaggerated self-importance.

(c) The "F" Word incident. On February 6, 1999, Mr. Meachum, who was to work the 4 p.m.- 12 midnight shift, came in early, at about 3:00 p.m., to ask Ms. Martin for credit time, which she disapproved (Tr. 39). Mr. Meachum said the Union had a lot of disagreements with management over credit time and he said he tried to explain the Union's position to Ms. Martin but she did not agree with him and, because she had no authority over the matter, they did not continue the discussion (Tr. 40). Mr. Meachum said he walked about thirty feet to the end of the control room to talk to Mr. Mike Johnson, the area representative and Mr. Boyd, another controller. Mr. Meachum said he asked Mr. Johnson for advice; that Mr. Johnson told him he was right; and Mr. Meachum responded, ". . . Can you believe how f _ _ _ _ stupid this is?" (Tr. 40). He said Mr. Barry Chadwick (Chad) Gossett, an Operations Supervisor, who was at the Supervisor's desk about five feet away (Tr. 41), ". . . took a step forward and said that, You guys are committing a disturbance . . . And we left." (Tr. 41, 43) About three or four hours later, Mr. Gossett asked Mr. Meachum to stop by his desk, which Mr. Meachum did, and sat on the edge of Mr. Gossett's desk. Mr. Gossett, who is not Mr. Meachum's supervisor, nevertheless, told Mr. Meachum that he, ". . . found your language earlier profane and offensive." (Tr. 44)

Mr. Gossett said, "I saw Mr. Meachum walk up through the area that I was supervising from the area I believe that he typically works and began to describe or discuss an issue that apparently had just arisen for him. In his discussion, his voice as rather loud. It was a very heated manner in which he described this situation, using profanity, vulgar language, and offensive language." (Tr. 149). Mr. Gossett said the incident, ". . . lasted -- approximately 30 seconds." (Tr. 156). Mr. Gossett said Mr. Meachum created a disturbance, "In my view, yes. As that came about, because of the emotion that was there. . . ." (Tr. 149). Mr. Gossett said he did not say anything to Mr. Meachum at that time, because, ". . . when issues like this come about, either behavioral or performance, I deal with the individual on a one-on-one basis, in as private of an environment as I can. . . ." (Tr. 150). Mr. Gossett said he later spoke to

Mr. Meachum, "I told him that the language that he had used earlier in the incident that occurred was rather vulgar and offensive, and personally I was offended by it." (Tr. 150). Mr. Gossett confirmed that Mr. Meachum was talking to Mr. Mike Johnson and Mr. Scott Boyd when he said, "Can you f'ing believe this? . . . Something along that lines (sic) . . . I know he used the F word . . . I find that offensive to me. Yes." (Tr. 151-152). Mr. Gossett said Mr. Meachum's voice was, "Far greater than a normal tone of voice. And I've had conversations with Mr. Meachum and have heard him in conversation with others, and this was I would say at least twice as loud as a normal tone in conversation." (Tr. 155).

CONCLUSIONS

I Respondent did not violate § 16(a)(1) as alleged in Paragraphs 17 and 23 of the Complaint.

As more fully set forth in Paragraph 5, above, on February 3, 1999, Mr. Meachum, who was not on duty, entered the control room and began addressing the controllers. As I have found, Mr. Meachum was loud and did cause a disturbance in the control room where upon area supervisor, Mr. Ron Vick, told Mr. Meachum to, ". . . tone it down or take it back out of the control room . . ." (Tr. 116). To be sure, Mr. Meachum was talking about negotiations as a Union representative; but talking about protected activity carries no warrant to cause a disruption of work in an Air Traffic Control Center and the Supervisor, Mr. Vick, merely told Mr. Meachum to tone it down or take it outside, which did not interfere with, restrain, or coerce Mr. Meachum in the exercise of any right under the Statute. Accordingly, the allegations of the Complaint in this regard are dismissed.

II Respondent did not violate §§ 16(a)(1) or (4) as alleged in Paragraphs 12, 16, 21 and 22 of the Complaint.

As more fully set forth in paragraph 6, above, sometime in February, 1999, Mr. Meachum, who was not on duty, entered the control room with, ". . . this big grid of things . . ." and went to Mr. Tom Hanes, who was on duty, to get the size and color of his "T" shirt order. Ms. Williams, ". . . just asked Darrell [Mr. Meachum] to wait until the employee was on break to speak to him. . . ." I specifically have rejected Mr. Meachum's and Mr. Hanes' testimony that Ms. Williams ever told Mr. Meachum, "Don't talk about anything in the control room unless it's ATC related" as Mr. Meachum stated or that she told Mr. Meachum,

". . . he needed to only be talking ATC related items" as Mr. Hanes stated. Such testimony was unconvincing and appeared wholly contrived. The record shows without contradiction that it is a common occurrence for Ms. Williams to stop conversations when a section is busy. While the distraction affected only Mr. Hanes, Ms. Williams did not violate § 16(a)(1) or (4) of the Statute by telling Mr. Meachum to wait until the employee was on break to peddle "T" shirts. There is no credible evidence that Ms. Williams was aware of Mr. Meachum's activity in enforcing a prior Authority Notice and/or that such activity by Mr. Meachum played any role whatever in Ms. Williams' statement to Mr. Meachum to wait until the employee was on break. Rather, it was solely Mr. Meachum's conduct in coming into the control room with, ". . . this big grid of things. . . ." and disrupting the work of a busy controller. Accordingly the allegations of the Complaint in this regard are dismissed.

III Respondent violated §§ 16(a)(1) and (2) of the Statute by its Oral Admonishment of Mr. Meachum for the Traffic Manager Coordinator incident and for the "F" Word incident.

1. As more fully set forth in paragraph 7.(a) above, on January 20, 1999, Mr. Kenneth Woodham, a Traffic Manager Coordinator, came to the control room to work his required eight hours as a controller. He plugged into the D side, rather than the A side. Other controllers protested Mr. Woodham's conduct which, they asserted, violated the rules. Mr. Meachum entered the discussion and, as I have found, told Mr. Woodham that the controllers were correct, i.e., that the rules required that he first work the A side; that he, Meachum, disagreed with the requirement and was negotiating with Respondent to change the rule; but, in the meantime, he, Woodham would be skipped on the break list because he had not complied with the rules. Mr. Meachum, as a Union representative, and the other controllers, had a right to insist that Mr. Woodham comply with established rules. Mr. Woodham asserted that as a staff member getting eight-hour currency he did not have to work the A side. Whether he was correct on whether Mr. Meachum and the controllers were correct is not before me. If Mr. Woodham disagreed with Mr. Meachum's and the controller's interpretation of the rules he could: (a) have sought the interpretation of the Operations Supervisor on duty; (b) filed a grievance. However harassed Mr. Woodham may have felt, Mr. Meachum had a protected right, as a Union official, to enforce established rules and Respondent violated §§ 16(a)(1) and (2) by its admonishment of Mr. Meachum for engaging in protected activity. I find no

credible evidence that Ms. Martin in issuing the oral admonishment either knew of Mr. Meachum's activity in enforcing a prior Authority notice and/or that such activity by Mr. Meachum played any part whatever in Ms. Martin's issuance of the admonishment. Accordingly, the allegation of a violation of § 16(a)(4) as to this incident is dismissed.

2. As more fully set forth in paragraph 7.(c), above, on February 6, 1999, Mr. Meachum had come in early for work to ask Ms. Martin for credit time, which she disapproved. Mr. Meachum said the Union had a lot of disagreements with management over credit time and, obviously, he was highly displeased with Ms. Martin's disapproval of his request. Mr. Meachum walked about thirty feet, to the end of the control room, to talk to his area representative, Mr. Mike Johnson. Mr. Boyd, another controller, was also present. At this point, Mr. Meachum loudly commented to Messrs. Johnson and Boyd, ". . . Can you believe how f _ _ _ _ _ stupid this is?", i.e. Ms. Martin's denial of his requested credit time. Mr. Barry Chadwick (Chad) Gossett (General Counsel's Motion to Amend Complaint was granted (Tr. 9) and the allegation in Paragraph 14 was amended with regard to Mr. Gossett) overheard Mr. Meachum's statement. Mr. Gossett, who was at the Supervisor's desk, about five feet away, stated that the incident lasted about 30 seconds and that he did not say anything to Mr. Meachum at that time. Some four hours later, Mr. Gossett saw Mr. Meachum in the area and asked him to stop by his desk. At that time, Mr. Gossett, ". . . told him that the language that he had used earlier . . . was rather vulgar and offensive, and personally I was offended by it." I find entirely unconvincing Mr. Gossett's assertion that Mr. Meachum's statement created a disturbance. Clearly, Mr. Meachum was speaking to his area representative and to Mr. Boyd, and there is nothing in the record to indicate that they were disturbed by Mr. Meachum's statement; the entire incident, according to Mr. Gossett lasted 30 seconds; and Mr. Meachum's statement was impulsive. In this case the parties have stipulated, ". . . that profanity is used in the control room at the DFW Center." (Tr. 10) Moreover, the Authority has made clear that, notwithstanding that Mr. Gossett found the "F" word vulgar and offensive, use of such language is not of such an outrageous nature as to remove it from the protection of the Statute. Department of the Air Force, Grissom Air Force Base, Indiana, 51 FLRA 7, 12 (1995). Accordingly, Respondent violated § 16(a)(1) and (2) by its admonishment of Mr. Meachum for use of the "F" word. Again, there is no credible evidence that Ms. Martin in issuing the oral admonishment either knew of Mr. Meachum's activity in enforcing a prior Authority notice

and/or that such activity played any part whatever in Ms. Martin's issuance of the admonishment. Accordingly, the allegation of a violation of § 16(a)(4) as to this incident is dismissed.

IV Admonishment for Guard Shack Incident.

The Complaint does not allege that an oral admonishment of Mr. Meachum for this incident, the facts concerning which are fully set forth in paragraph 7.(b), above, violated the Statute. Because Respondent violated the Statute by the oral admonishment for two of the three grounds stated (The Traffic Manager Coordinator incident and the "F" Word incident), the entire oral admonishment will be ordered withdrawn and all reference thereto removed from Mr. Meachum's personnel record. Nevertheless, Respondent is not precluded from taking disciplinary action against Mr. Meachum for the Guard Shack incident should it determine that such single incident warrants such action. Mr. Meachum stated that he did not believe he would have got the oral admonishment for the Guard Shack incident alone, saying,

"A. Because it didn't rise to any threshold that would -- I've been an employee for 18 years, and I've had conversations with various people, guard actually being one, where it was not something that I would have expected disciplinary action for" (Tr. 94).

Having found that Respondent violated §§ 16(a)(1) and (2) by the oral admonishment of Mr. Meachum, it is recommended that the Authority adopt the following:

ORDER

Pursuant to § 2423.41 of the Authority's Rules and Regulations, 5 C.F.R. § 2423.41, and § 18 of the Statute, 5 U.S.C. § 7118, it is hereby ordered that the Federal Aviation Administration, Fort Worth, Texas, shall:

1. Cease and desist from:

(a) Interfering with, restraining or coercing Mr. Darrell Meachum, or any other representative of the National Air Traffic Controllers Association, the exclusive representative of a unit of our employees, for engaging in protected activity under the Statute.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights assured by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Forthwith remove and expunge from all files, all records of, and references to, the oral admonishment given Mr. Darrell Meachum on February 10, 1999.

(b) Post at its facilities at Fort Worth, Texas, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms they shall be signed by the Manager of the Fort Worth Air Traffic Control Center, Fort Worth, Texas, and they shall be posted and maintained for 60 consecutive days thereafter in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(c) Pursuant to § 2423.41(e) of the Authority's Rules and Regulations, 5 C.F.R. § 2423.41(e), notify the Regional Director, Dallas Region, Federal Labor Relations Authority, 525 South Griffin Street, Suite 926, LB-107, Dallas, Texas 75202-1906, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: December 21, 2000
Washington, DC

**NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY**

The Federal Labor Relations Authority has found that the Federal Aviation Administration, Fort Worth Air Traffic Control Center, Fort Worth, Texas, has violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT interfere with, restrain or coerce Mr. Darrell Meachum, or any other representative of the National Air Traffic Controllers Association, the exclusive representative of a unit of our employees (hereinafter, referred to as, "Union"), for engaging in protected activity under the Federal Service Labor-Management Relations Statute (hereinafter, referred to as, the "Statute").

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of their rights assured by the Statute.

WE WILL forthwith remove and expunge from all files, all records of, and references to, the oral admonishment given Mr. Darrell Meachum on February 10, 1999.

DATE: _____ BY:

MANAGER
Air Traffic Control Center
Fort Worth, Texas

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director, Dallas Regional Office, Federal Labor Relations Authority, whose address is: 525 S. Griffin Street, Suite 926, LB-107, Dallas, Texas 75202-1906, and whose telephone number is: (214) 767-4996.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION** issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case Nos. DA-CA-90666 and DA-CA-90707, were sent to the following parties:

—

CERTIFIED MAIL & RETURN RECEIPT

CERTIFIED NOS:

John Bates, Esquire
Bobby R. Devadoss, Esquire
Federal Labor Relations Authority
525 S. Griffin St., Suite 926, LB-107
Dallas, TX 75202-1906

P 855 724 081

Daniel G. Murphy, Esquire
Rachel W. Nolen, Esquire
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2601 Meacham Blvd.
Fort Worth, TX 76193-0016

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Darrell T. Meachum
Representative
NATCA
P.O. Box 155006
Fort Worth, TX 76155

P 855 724 083

DATED: December 22, 2000
Washington, DC